

Introduced by Senators Lockyer and Rainey

February 28, 1997

An act to add Chapter 9.45 (commencing with Section 6248) to Title 7 of Part 3 of the Penal Code, and to amend Section 3051 of, and to add Section 3051.5 to, the Welfare and Institutions Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

SB 1089, as introduced, Lockyer. Prisoners: substance abuse treatment.

(1) Existing law requires the Department of Corrections to establish standards for pilot projects to contract with private sector health care facilities for the provision of medical, developmental, and mental health services to prisoners.

This bill would require the department to establish certification criteria for designating a public or private facility as a substance abuse treatment facility, and to develop treatment protocols based on the therapeutic community model of intensive substance abuse treatment. The department would be required to contract with certified facilities to provide that treatment for inmates, and to expand the number of beds in state correctional facilities in order to provide that treatment.

(2) Under existing law, if the judge finds that a defendant may be addicted, or may be in imminent danger of becoming addicted, to narcotics, he or she is required to suspend the execution of sentence and order the district attorney to file a petition for commitment of the defendant to the Director of

Corrections for confinement in a narcotic detention, treatment, and rehabilitation facility.

This bill would authorize the judge to suspend the execution of sentence and would add an intensive substance abuse treatment program to those facilities to which the petition for commitment could apply.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 9.45 (commencing with
2 Section 6248) is added to Title 7 of Part 3 of the Penal
3 Code, to read:

4

5 CHAPTER 9.45. INTENSIVE SUBSTANCE ABUSE TREATMENT
6 PROGRAMS
7

8

9 6248. The Legislature hereby finds and declares the
10 following:

11 (a) Over 70 percent of the state's new commitment
12 admissions to prison have a known history of substance
13 abuse. Drug charges are a known contributing factor in
14 over 60 percent of the parolees returned to prison for
15 parole violations.

16 (b) The relationship between public safety,
17 recidivism, and substance abuse is undeniable and
18 significant. Additional resources are necessary to
19 intervene with substance abuse and other behaviors that
20 contribute to criminality.

21 (c) Research has demonstrated the effectiveness of
22 intensive drug treatment programs in reducing
23 recidivism of state inmates. The evaluation of the
24 therapeutic community model of intensive substance
25 abuse treatment has shown a significant reduction in
26 recidivism for participants on parole for one year after
27 release from the Amity Institutional Substance Abuse
28 Treatment Program at the Robert J. Donovan State
29 Prison in San Diego. Return-to-custody data for program
participants and a control group as of April 18, 1995,



1 indicated that 26 percent of the program subjects with
2 both institutional and community treatment were
3 returned to custody, compared to 43 percent of the
4 participants with in-prison treatment only and 63 percent
5 of the control group.

6 (d) The provision of an effective model of treatment
7 to the offender population establishes the prospect of
8 future cost savings due to avoided incarceration. The
9 community treatment services provided to the in-prison
10 program graduates will build on the treatment
11 framework established in the institution and contribute
12 to a greater degree of public safety due to reduced crime
13 and drug-related activity.

14 6248.2. (a) The Department of Corrections shall
15 establish certification criteria for designating a public or
16 private facility as a substance abuse treatment facility by
17 July 1, 1998. The department shall ensure that a certified
18 facility provides a cost-effective and secure environment
19 that minimizes risk to public safety and provides 24-hour
20 supervision of inmates placed in the program. The
21 department shall also develop treatment protocols based
22 on the therapeutic community model of intensive
23 substance abuse treatment.

24 (b) The department shall contract with certified
25 facilities for the purpose of providing intensive substance
26 abuse treatment for inmates who are placed in the
27 facility. It is the intent of the Legislature that the
28 department contract for at least 1,000 beds in those
29 facilities by July 1, 2001. Each facility shall cooperate with
30 the department in collecting data to measure the
31 outcomes to be reported pursuant to Section 6248.6.

32 (c) The Director of Corrections may place eligible
33 offenders in a certified substance abuse community
34 correctional facility. In determining requirements for the
35 program, the department shall consider placements that
36 match inmate needs with corresponding facility service
37 levels, security capacity, and ability to provide services in
38 a cost-effective manner. The department shall monitor
39 the facility to ensure compliance with the custody and
40 program requirements.

(d) (1) An offender is eligible for placement pursuant to this section if he or she was committed to state prison and has one year or less remaining to serve on his or her sentence, after deducting any presentence credit and credit earned pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7.

(2) An eligible offender shall have a demonstrated history of alcohol or controlled substance abuse, or both, as long as both of the following apply:

(A) The person has never been convicted of a violent felony, as defined in subdivision (c) of Section 667.5, or any felony listed in subdivision (e) of Section 19.3, in this state or any other state.

(B) While incarcerated, the person did not permanently forfeit any sentence credits of more than 60 days for an act listed in paragraph (1) of subdivision (a) of Section 2932.

(e) The maximum period of participation in a program certified under this chapter shall not exceed the maximum period for which the offender may have been incarcerated in state prison. Upon completion of a program, the person is subject to the parole provisions of Section 3000.

(f) The Department of Corrections or the director of the program at any time may deem a person otherwise eligible pursuant to this section to be ineligible, which shall result in the person being transferred to the state prison to serve his or her remaining sentence, with credit for time served in the program.

(g) Participation in a program pursuant to this chapter shall be credited to an inmate's sentence in the same amount as the person would have otherwise received if he or she were incarcerated.

(h) Persons participating in a program pursuant to this chapter remain under the legal custody of the Department of Corrections.

6248.4. In order to provide intensive substance abuse treatment using the therapeutic community model, the department shall expand the number of beds in state correctional facilities for that purpose by 4,000, in

1 addition to the beds already authorized, by January 1,
2 2002. Other treatment protocols may be substituted if the
3 department determines that an alternative treatment is
4 more cost-effective.

5 6248.6. The department shall provide to the Joint
6 Committee on Prison Construction and Operations a
7 cost-benefit analysis of the bed expansion required by
8 Section 6248.4, and of the programs operated by the
9 facilities under contract pursuant to Section 6248.2, no
10 later than March 1, 2002. The analysis shall include both
11 of the following:

12 (a) An evaluation of outcomes based on a comparison
13 between the participants in treatment and inmates with
14 similar substance abuse and criminal histories who do not
15 receive treatment. This comparison shall include rates of
16 recidivism, length of time before an offender's return to
17 custody, severity of offenses committed by reoffenders,
18 and how many offenders subsequently commit felonies
19 that subject them to the enhancement provisions of
20 Section 1170.12.

21 (b) An estimate of the custody and parole cost
22 reduction achieved through fewer returns to custody of
23 participants in treatment.

24 SEC. 2. Section 3051 of the Welfare and Institutions
25 Code is amended to read:

26 3051. (a) Upon conviction of a defendant for any
27 crime in any superior court, or following revocation of
28 probation previously granted, and upon imposition of
29 sentence, if ~~it appears to~~ the judge *finds* that the
30 defendant may be addicted or by reason of repeated use
31 of narcotics may be in imminent danger of becoming
32 addicted to narcotics, the judge ~~shall~~ *may* suspend the
33 execution of the sentence *to state prison* and order the
34 district attorney to file a petition for commitment of the
35 defendant to the Director of Corrections for confinement
36 in ~~the~~ *a* narcotic detention, treatment, and rehabilitation
37 facility ~~unless, or an intensive substance abuse treatment~~
38 *program, as specified in Chapter 9.45 (commencing with*
39 *Section 6248) of Title 7 of Part 3 of the Penal Code, if all*
40 *of the following apply:*

1 (1) *The defendant has a pattern of habitual nonviolent*
2 *criminality related to substance abuse and addiction.*

3 (2) *The defendant previously has been referred to a*
4 *community-based substance abuse treatment program,*
5 *but has failed to complete or benefit from that treatment.*

6 (3) *The defendant would benefit from custodial*
7 *treatment.*

8 (4) *The defendant's current conviction is not for a*
9 *violent crime, as specified in subdivision (e) of Section*
10 *19.3 or subdivision (c) of Section 667.5, and the defendant*
11 *does not have a prior conviction for a violent crime.*

12 *A judge shall not order the commitment of a defendant*
13 *if, in the opinion of the judge, the defendant's record and*
14 *probation report indicate such a pattern of criminality*
15 *that he or she does not constitute a fit subject for*
16 *commitment under this section.*

17 (b) Upon the filing of the petition, the court shall order
18 the defendant to be examined by one physician.
19 However, the examination may be waived by a defendant
20 if the defendant has been examined in accordance with
21 Section 1203.03 of the Penal Code and that examination
22 encompassed whether defendant is addicted or is in
23 imminent danger of addiction, and if the defendant is
24 represented by counsel and competent to understand the
25 effect of the waiver. In cases where a physician's report
26 is waived by the defendant, the Department of
27 Corrections may perform an evaluation and provide a
28 report as to the defendant's addiction or imminent
29 danger of addiction. If the Department of Corrections
30 determines that the defendant is not addicted or in
31 imminent danger of addiction, the defendant shall be
32 returned to the sentencing court for resentencing. The
33 examination may also be waived upon stipulation by the
34 defendant, his or her attorney, the prosecutor, and the
35 court that the defendant is addicted or is in imminent
36 danger of addiction. If a physician's report is prepared, at
37 the request of the defendant, the court shall order the
38 defendant to be examined by a second physician. At least
39 one day before the time of the examination as fixed by the
40 court order, a copy of the petition and order for

1 examination shall be personally delivered to the
2 defendant. A written report of the examination by the
3 physician or physicians shall be delivered to the court,
4 and if the report is to the effect that the person is not
5 addicted nor in imminent danger of addiction, it shall so
6 certify and return the defendant to the department of the
7 superior court that directed the filing of the petition for
8 the ordering of the execution of the sentence. The court
9 may, unless otherwise prohibited by law, modify the
10 sentence or suspend the imposition of the sentence. If the
11 report is to the effect that the defendant is addicted or is
12 by reason of the repeated use of narcotics in imminent
13 danger of addiction, further proceedings shall be
14 conducted in compliance with Sections 3104, 3105, 3106,
15 and 3107.

16 (c) If, after a hearing, the judge finds that the
17 defendant is a narcotic addict, or is by reason of the
18 repeated use of narcotics in imminent danger of
19 becoming addicted to narcotics, the judge shall make an
20 order committing the person to the custody of the
21 Director of Corrections for confinement in the facility
22 until a time that he or she is discharged pursuant to
23 Article 5 (commencing with Section 3200), except as this
24 chapter permits earlier discharge. If, upon the hearing,
25 the judge finds that the defendant is not a narcotic addict
26 and is not in imminent danger of becoming addicted to
27 narcotics, the judge shall so certify and return the
28 defendant to the department of the superior court that
29 directed the filing of the petition for the ordering of
30 execution of sentence. The court may, unless otherwise
31 prohibited by law, modify the sentence or suspend the
32 imposition of the sentence.

33 (d) If a person committed pursuant to this section is
34 dissatisfied with the order of commitment, he or she may,
35 within 10 days after the making of the order, file a written
36 demand for a jury trial in compliance with Section 3108.

37 (e) A psychologist licensed pursuant to Chapter 6.6
38 (commencing with Section 2900) of Division 2 of the
39 Business and Professions Code may perform the
40 examination specified in this section and Section 3050.

1 This section does not expand the scope of practice of
2 psychologists as set forth in Section 2903 of the Business
3 and Professions Code nor does this section allow a
4 psychologist to perform any activity that would otherwise
5 require a physician's and surgeon's license.

6 SEC. 3. Section 3051.5 is added to the Welfare and
7 Institutions Code, to read:

8 3051.5. In order to provide intensive substance abuse
9 treatment based on the therapeutic community model,
10 the Department of Corrections shall expand the number
11 of treatment beds for inmates assigned to Intensive
12 Substance Abuse Treatment programs, to 3,000 by
13 January 1, 2002. Other treatment protocols may be
14 substituted if the department determines that an
15 alternative treatment is more cost-effective.

